

Message Text

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TO AMEMBASSY BUCHAREST PRIORITY

C O N F I D E N T I A L STATE 001901

E.O. 11652: GDS

TAGS: EEWT, RO

SUBJECT: TRADE AGREEMENT NEGOTIATIONS

REF: A) BUCHAREST 5586

B) STATE 263875

1. SUMMARY. THIS MESSAGE TRANSMITS (A) TEXTS OF ARTICLE III AND ANNEX I OF OUR DRAFT AGREEMENT, CONCERNING SAFEGUARDS AGAINST MARKET DISRUPTION; (B) GUIDANCE REGARDING ARTICLE V ON INDUSTRIAL PROPERTY, INDUSTRIAL RIGHTS AND PROCESSES, AND COPYRIGHTS; AND (C) PROVISIONS FOR DUTY-FREE TREATMENT OF SAMPLES AND ADVERTISING MATERIALS, AS WELL AS ARTICLES FOR USE IN FAIRS AND EXHIBITIONS.

THESE WILL PERMIT EMBASSY TO TABLE ALL MISSING PORTIONS

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OF US DRAFT.

2. TEXTS OF ARTICLE III AND ANNEX I ARE AS FOLLOWS:

ARTICLE III: SAFEGUARDS

1) THE PARTIES AGREE TO CONSULT PROMPTLY AT THE REQUEST OF EITHER PARTY SHOULD IT DETERMINE THAT ACTUAL OR PROSPECTIVE IMPORTS OF A PRODUCT ORIGINATING IN THE TERRITORY OF THE OTHER PARTY ARE CAUSING OR THREATEN TO CAUSE, OR ARE SIGNIFICANTLY CONTRIBUTING TO, MARKET DISRUPTION WITHIN A DOMESTIC INDUSTRY OF THE REQUESTING PARTY. THE PROCEDURES FOR SUCH CONSULTATIONS ARE SET FORTH IN ANNEX I.

2) EITHER PARTY MAY IMPOSE SUCH RESTRICTIONS AS IT DEEMS

APPROPRIATE ON IMPORTS ORIGINATING IN THE TERRITORY OF THE OTHER PARTY TO PREVENT OR REMEDY SUCH ACTUAL OR THREATENED MARKET DISRUPTION.

ANNEX I: PROCEDURES FOR THE IMPLEMENTATION OF ARTICLE III

1A) THE CONSULTATIONS PROVIDED FOR UNDER ARTICLE III SHALL INCLUDE A REVIEW OF THE MARKET AND TRADE SITUATION FOR THE PRODUCT INVOLVED AND SHALL BE CONCLUDED WITHIN SIXTY DAYS OF THE REQUEST UNLESS OTHERWISE AGREED DURING THE COURSE OF SUCH CONSULTATIONS. BOTH PARTIES, IN CARRYING OUT THESE CONSULTATIONS, SHALL TAKE DUE ACCOUNT OF ANY CONTRACTS BETWEEN NATIONALS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE UNITED STATES OF AMERICA AND THE SOCIALIST REPUBLIC OF ROMANIA CONCLUDED PRIOR TO THE REQUEST FOR CONSULTATIONS.

B) UNLESS A DIFFERENT SOLUTION IS AGREED UPON DURING THE CONSULTATIONS, THE QUANTITATIVE IMPORT LIMITATIONS OR OTHER RESTRICTIONS STATED BY THE IMPORTING PARTY TO BE NECESSARY TO PREVENT OR REMEDY THE MARKET DISRUPTION IN QUESTION SHALL BE DEEMED AGREED BY THE TWO PARTIES.

C) AT THE REQUEST OF THE IMPORTING PARTY, IF IT DETERMINES THAT AN EMERGENCY SITUATION EXISTS, THE LIMITATIONS OR OTHER RESTRICTIONS REFERRED TO IN ITS REQUEST FOR CONSULTATIONS SHALL BE PUT INTO EFFECT PRIOR TO THE CONCLUSION OF SUCH CONSULTATIONS.

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2A) IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS, EACH PARTY SHALL TAKE APPROPRIATE MEASURES TO ENSURE THAT EXPORTS FROM ITS COUNTRY OF THE PRODUCTS CONCERNED DO NOT EXCEED THE QUANTITIES OR VARY FROM THE RESTRICTIONS ESTABLISHED FOR IMPORTS OF SUCH PRODUCTS INTO THE OTHER COUNTRY PURSUANT TO PARA 1 OF THIS ANNEX.

B) EACH PARTY MAY TAKE APPROPRIATE MEASURES WITH RESPECT TO IMPORTS INTO ITS COUNTRY TO ENSURE THAT IMPORTS OF PRODUCTS ORIGINATING IN THE OTHER COUNTRY COMPLY WITH SUCH QUANTITATIVE LIMITATIONS OR OTHER RESTRICTIONS. END TEXTS.

3. REGARDING ARTICLE V, WE BELIEVE ON BALANCE IT ADVISABLE TO RETAIN APPROACH REFLECTED IN DRAFT TRANSMITTED STATE 263875 RATHER THAN TO TRY TO TAILOR LANGUAGE TO SITUATIONS IN ROMANIA AND US. IN PARA 2, DEALING WITH INDUSTRIAL RIGHTS AND PROCESSES, IE. KNOW-HOW AS

DISTINGUISHED FROM PATENTS, WE BELIEVE IT INADVISABLE TO GO BEYOND NATIONAL TREATMENT STANDARD IN VIEW OF COMPLEXITIES REGARDING RIGHTS IN THIS AREA UNDER US LAW AND POSSIBILITY THAT LEGAL RIGHTS WILL SHIFT OVER TIME. TO MAKE CLEAR THAT RIGHTS EMBODIED IN PARA 2 ARE DISTINCT FROM THOSE IN PARAS 1 OR 3, PARA 2 SHOULD BE REVISED AS FOLLOWS: QUOTE. 2. WITH RESPECT TO INDUSTRIAL RIGHTS AND PROCESSES OTHER THAN THOSE REFERRED TO IN PARAS 1 AND 3 OF THIS ARTICLE V, EACH PARTY SHALL PROVIDE THE SAME LEGAL PROTECTION TO NATIONALS, COMPANIES AND ECONOMIC ORGANIZATIONS OF THE OTHER PARTY THAT IS PROVIDED WITHIN ITS TERRITORY TO ITS OWN NATIONALS, COMPANIES AND ECONOMIC ORGANIZATIONS. UNQUOTE. OUR PARA 3 DESIGNED TO COMPLY WITH REQUIREMENT UNDER SECTION 405(B)(5) OF TRADE ACT THAT ANY SUCH COMMERCIAL AGREEMENT SHALL, QUOTE IF THE OTHER PARTY TO THE BILATERAL AGREEMENT IS NOT A PARTY TO THE UNIVERSAL COPYRIGHT CONVENTION, PROVIDE RIGHTS FOR UNITED STATES NATIONALS WITH RESPECT TO COPYRIGHTS IN SUCH COUNTRY NOT LESS THAN THE RIGHTS SPECIFIED IN SUCH CONVENTION. UNQUOTE.

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4. AT THE END OF ARTICLE IV, PARA 8, ADD QUOTE DUTY-FREE TREATMENT WILL ALSO BE ACCORDED TO SAMPLES WITHOUT COMMERCIAL VALUE AND ADVERTISING MATERIALS. UNQUOTE. AT THE END OF ARTICLE IV, PARA 10, ADD QUOTE SUBJECT TO THE LAWS IN FORCE WITHIN THEIR TERRITORIES, THE PARTIES AGREE TO ALLOW THE IMPORT AND RE EXPORT ON A DUTY-FREE BASIS OF ALL ARTICLES FOR USE BY NATIONALS, ECONOMIC ORGANIZATIONS, AND ENTERPRISES OF THE OTHER PARTY IN FAIRS AND EXHIBITIONS, PROVIDING THAT SUCH ARTICLES ARE NOT SOLD. UNQUOTE. THESE CORRESPOND TO PROVISIONS IN ARTICLE X OF ROMANIAN DRAFT.

5. WITH THESE ADDITIONS AND CHANGE, US DRAFT IS COMPLETE. IT SHOULD BE TRANSMITTED TO GOR AT EARLIEST OPPORTUNITY. FURTHER COMMENTS OR OTHER ISSUES RAISED BY EMBASSY AND

GOR WILL BE TRANSMITTED SOON. KISSINGER

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